

REPORT  
OF THE  
COMMITTEE ON COMMERCIAL LAW.

---

This report is the same as that made in 1887, and will be found at page 332 of the Report of the Association for that year.

---

REPORT  
OF THE  
COMMITTEE ON JURISPRUDENCE AND LAW REFORM  
ON  
METHODS OF IMPROVING THE FORM OF AMERICAN  
LEGISLATION.

---

*To the American Bar Association:*

Your Committee on Jurisprudence and Law Reform would submit the following report in regard to improving the methods of American legislation.

At the meeting of the Association in 1882, this resolution was adopted:

*“Resolved, That in view of the growing evil of hasty and ill-considered legislation, and of defective phraseology in the statute law, this Association recommends the adoption by the several states of a permanent system by which the important duty of revising and maturing the acts introduced into the legislatures shall be intrusted to competent officers, either by the creation of special commissions or committees of revision, or by devolving the duty upon the attorney-general of the state.”*

(343)

A paper read at the meeting of the Association by Mr. Sterne, of New York, on "Slipshod Legislation," resulted, in 1885, in the adoption of this further resolution :

"*Resolved*, That the Committee on Jurisprudence and Law Reform be directed to prepare and submit to the Association, at its next annual meeting, the draft of such laws as they shall think suitable to carry into effect the recommendation of the resolution passed by the Association at its annual meeting in 1882, relating to commissions on legislation."

In obedience to that direction, your committee prepared and reported to the Association at its meeting in 1886 (Reports of the Association, Vol. 9, p. 282), the following draft :

"SECTION 1. Within the first ten days of every stated or special session of the (*here insert the proper name of the legislative body*), the president of the Senate shall appoint (*five*) senators, and the speaker of the (*House*) shall appoint five members of the (*here insert House of Representatives, Assembly or other proper designation of the other House*), who shall together constitute a Joint Standing Committee for the Revision of Bills. Said committee shall have power to require the assistance of the attorney-general and his presence at their sessions, or, in case of his inability to act, to employ counsel and to fix, subject to the written approval of the governor, the compensation to be paid such counsel.

"SECT. 2. Every bill shall, after the same shall have passed the legislature, and before it is signed by the presiding officer of either House, be submitted to said Joint Committee for report thereon, and said committee shall report the same back to the House in which it originated. Said report shall contain such suggestions for amendments as may by said committee be regarded as necessary to make the bill express clearly the intention of the legislature, and harmonize with existing statutes and constitutional provisions, or shall state that in the opinion of the committee no amendments are necessary. Said bill shall then be considered and acted upon as to its final passage."

The report was accepted, and the consideration of its recommendations deferred to the next annual meeting. No

action was taken upon it at that meeting, and your committee would therefore now recall it to your attention.

The resolution passed by the Association in 1882 favored the revision of bills either by special commissions or committees, or by the attorney-general.

It has not seemed to your committee that it would be judicious to give the great power of clothing the intent of the legislature in words to the single hand of the attorney-general.

Nor could they recommend a resort to the aid of the judiciary. We have been taught to regard the division of legislative from judicial functions as a fundamental part of our institutions.

The respect with which Americans regard the interpretation of statutes from the bench, and the ready acquiescence with which they receive, as final, its decisions as to their validity or invalidity, would be shaken, if the same questions were or ought to have been considered and passed upon by the same tribunal before the action of the legislature. And, on the other hand, our people would never consent to give the judges a practical veto on proposed measures of legislation for the public good.

There are also weighty objections to the appointment of a standing commission for a similar purpose. Its members would expect compensation, unless already holding a salaried office, and even in that case would soon ask for an increase of salary, if, as is probable, they found their official duties thus materially enlarged. Nor is any standing commission as thoroughly in touch either with the sentiments of the people or the spirit of the legislature, as members of the latter body would be.

These considerations, and the natural reluctance of any legislature to give to others the supervision of its work, seemed to us decisive against the expediency of proposing to confide this power to special commissions, notwithstanding their members might be selected with greater care, and would probably have peculiar qualifications for the work.

Your committee have therefore reported in favor of a simple legislative committee, appointed at each session, from the members of both Houses, and aided, so far as they desire it, by the counsel of the attorney-general. In the event of his inability to be present, and in the few states where no such office exists, the committee should have such professional assistance as they may require, at the public expense.

Your committee believe the measure thus reported would prove a material check to a growing evil, and they therefore recommend the adoption of the accompanying resolution.

All of which is respectfully submitted.

SIMEON E. BALDWIN,  
HENRY HITCHCOCK,  
GEO. TUCKER BISPHAM,  
JOHN F. DILLON,  
JOHN M. BUTLER,  
*Committee.*

*“Resolved, That the Local Councils in the several states and territories be requested to endeavor to secure the adoption in each of an act substantially like the draft of a bill given in the foregoing report, and that the secretary print it in suitable form for legislative consideration, and send copies with a suitable circular letter to each councillor and to the governor of each state and territory.”*